

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 1999-253-E - ORDER NO. 2000-754
SEPTEMBER 11, 2000

IN RE: Application of Broad River Energy, LLC for) ORDER GRANTING
a Certificate of Environmental Compatibility) AMENDMENT TO
and Public Convenience and Necessity.) CERTIFICATE

This matter comes before the Public Service Commission of South Carolina ("Commission") by way of the Application of Broad River Energy LLC and Broad River Investors LLC ("BRI") (collectively referred to herein as "Company") for amendment of the Certificate of Environmental Compatibility and Public Convenience and Necessity ("Certificate"), which the Commission previously issued, to construct and operate an expansion of a generating plant for the production of electric power and energy to be located in the vicinity of the city of Gaffney in Cherokee County, South Carolina. The Commission issued the Certificate by Order No. 1999-671, dated September 22, 1999. On May 19, 2000, the Company filed its Application for Amendment of the Certificate pursuant to S.C. Code Ann. Section 58-33-10 et seq., (1976), ("The Siting Act"). The Application for Amendment of the Certificate, which is presently before the Commission, seeks amendment of the Certificate to authorize the construction and operation of two additional generating units at the facility.

In accordance with the provision of S.C. Code Ann. Section 58-33-120(3) (1976), the Company published notice of its intent to file the Application. In addition, the Company's Application included certification that it served a copy of the Application on

those governmental officials and such other persons as required by S.C. Code Ann. § 58-33-120(2) (1976).

Upon receipt of the Company's Application, the Commission's Executive Director required the Company to publish a prepared Notice of Filing. The Notice of Filing described the nature of the Application and advised all interested parties of the manner in which they might intervene or otherwise participate in this proceeding. The Company duly submitted affidavits which demonstrated compliance with the Executive Director's instructions. Philip S. Porter, Consumer Advocate for the State of South Carolina ("Consumer Advocate") intervened in this proceeding.¹

On June 27, 2000, the Commission issued its Order No. 2000-0542 by which the Commission established dates for prefiling testimony and exhibits of the Company, Commission Staff, and intervenors. The Company filed its intended direct testimony in compliance with the directives of Order No. 2000-0542. Neither the Commission Staff nor the Consumer Advocate prefiled testimony or exhibits. During the hearing in this matter, the Consumer Advocate indicated that he did not oppose the relief which the Company requested in its Application.

On July 3, 2000, the Commission issued a Notice of Hearing, advising all parties that the Commission scheduled a hearing in this matter for August 17, 2000, at 2:30 P.M.

On August 17, 2000, in accordance with S.C. Code Ann. Section 58-33-130(1) (1976) and the Commission's rules of practice and procedure, the Commission conducted

¹ The Consumer Advocate intervened in the original siting application filed on June 7, 1999, and which resulted in the issuance of Order No. 1999-671. The Consumer Advocate did not participate in the hearing on the original application. The Consumer Advocate filed another Petition to Intervene to ensure participation in the instant proceeding involving the Application for Amendment of the Certificate.

an evidentiary hearing in this proceeding. Robert T. Bockman, Esquire, represented the Company; Hana Pokorna-Williamson, Staff Attorney, represented the Consumer Advocate; and Florence P. Belser, Deputy General Counsel, represented the Commission Staff. The Company offered the testimony of Bryan E. Schueler. At the request of the Commission and without objection by any party, Randy Watts took the witness stand to answer questions from the Commissioners. In addition to the testimony of those two witnesses, the administrative record of this proceeding included the Company's application and the various notices and pleadings which this Order has previously identified.

Upon full review of the evidence of this proceeding, the Commission hereby grants the relief which the Company seeks and issues this order as an amendment to the Certificate contained in Order No. 1999-671, dated September 22, 1999. We base our decision on the following findings and conclusion:

FINDINGS OF FACT

1. Broad River Energy LLC and Broad River Investors LLC are limited liability companies, owned by SkyGen Energy LLC, and are organized under the laws of the State of Delaware, with their principal place of business in Northbrook, Illinois. They are qualified to transact business in the State of South Carolina. BRI was created for the purposes of financing the purchase of the two additional generating units and related equipment and for certain contracting purposes.

2. BRI intends to construct and operate two additional natural gas fueled simple cycle combustion turbine generating units with a nominal net capacity of 320MW

("Units 4 and 5"). Units 4 and 5 will be added to the Broad River Energy Center, the first three units of which were the subject of the original Certificate. The Broad River Energy Center is located on a 60.35 acre tract east of the city of Gaffney in Cherokee County, South Carolina. BRI expects the Units 4 and 5 to be in operation by July 1, 2001.

3. The Broad River Energy Center will utilize Units 4 and 5 in simple cycle mode to produce approximately 320MW (nameplate rating) of electrical output. Each of the combustion turbine units will be enclosed in its own weather-tight acoustical enclosure and each unit will have an individual exhaust stack. Package boilers fired with natural gas will be utilized for generating steam for power augmentation. A separate building houses control, maintenance, and administrative operations. The site for the Broad River Energy Center includes tanks for the storage of fuel oil, raw water, and demineralized water.

4. The facility interconnects with the existing 230kV transmission lines of Duke Energy's transmission system which cross the southern portion of the site. The existing electric substation will be expanded to add two additional step-up transformers and circuit breakers to be located adjacent to the units. The existing substation is interconnected to Duke Energy's switching station which is located adjacent to the project site.

5. The facility connects with the natural gas pipeline operated by Williams Gas Pipelines-Transco, which also crosses the southern portion of the site.

6. BRI will be an exempt wholesale generator ("EWG") under the rules and regulations of the Federal Energy Regulatory Commission ("FERC"). BRI expects to receive FERC's certification of its status in the near future.

7. Under the terms of a Purchased Power Agreement dated July 7, 2000, (the "Agreement") the Company will sell and deliver exclusively to Carolina Power & Light Company ("CP&L") all the electric capacity and energy which Units 4 and 5 produce, net of the Facility's own auxiliary electrical requirements. Also under the terms of the Agreement, CP&L will purchase, receive, and pay for such electric power and will use that power to meet the needs of its customers. The Agreement contains an initial term of twenty (20) years, which CP&L may extend for two additional five (5) year periods.

8. Units 4 and 5 will serve a portion of the peaking electric needs of CP&L. The simple cycle combustion turbine technology is the state of the art process technology for meeting that type of need for electric power and energy. The low emissions of the combustion turbines when fired on either natural gas or distillate oil along with the fast start up times for the units have made combustion turbines the standard for peaking electric plants. The simple cycle combustion turbine technology is the most efficient alternative to meet BRI's obligations under the Agreement.

9. The Company is responsible for interconnection to the gas pipeline. CP&L is responsible for all fuel transportation and supply contracts to deliver fuel to the Facility.

10. The Company is responsible for interconnecting the Facility to the Duke Energy's transmission system. CP&L will be responsible for all transmission agreements and transmission costs for delivery of the energy to its system.

11. Units 4 and 5 are needed to enable BRI to satisfy its obligations under the terms of the Agreement, which will assist CP&L to meet its customers' needs for peaking electric energy.

12. The Facility is located on a wooded site of approximately sixty acres that was unused prior to construction of Units 1, 2, and 3. Units 4 and 5 will be constructed within the originally enclosed area in which Units 1, 2, and 3 are located. The natural gas pipeline and electric transmission line corridors are within the sixty acres, eliminating any off-site impacts associated with creating new utility corridors. The Company will obtain the necessary permits from the South Carolina Department of Health and Environmental Control ("DHEC") for stormwater management and will follow DHEC's requirements. The Company will obtain the appropriate air permit from DHEC, and its air quality modeling demonstrates that there are not significant impacts on air quality from the operations of Units 4 and 5. There are no negative environmental impacts as a result of the intended construction and operation of Units 4 and 5.

13. The Broad River Energy Center will receive water and wastewater service from the Board of Public Works, City of Gaffney ("Board"). The Board has extended its existing lines a short distance to the eastern edge of the project site along S.C. Highway 329. By using the existing services and systems of the Board, there are no adverse

environmental impacts for the water and wastewater requirements of the Broad River Energy Center.

14. Neither the Company nor the Commission has received any adverse comments from any governmental agency responsible for environmental protection, land use planning, or other regulation of the site or of Units 4 and 5. The South Carolina Department of Natural Resources submitted general comments concerning possible erosion from land disturbing activities during construction of Units 4 and 5. The Company will take necessary steps for appropriate erosion control measures.

15. The Company and the Commission have satisfied all statutory requirements for notice and opportunity for hearing as required by S.C. Code Ann. Sections 58-33-10 et seq. (1976).

CONCLUSIONS OF LAW

1. BRI's obligations to provide peaking power under the Agreement and CP&L's anticipated need for peaking power to serve its customers establish that there is a need for Units 4 and 5.

2. There are no adverse environmental impacts associated with the anticipated construction and operation of Units 4 and 5.

3. Considering the state of available technology and the nature and economics of the various alternatives and other pertinent considerations, the impact of Units 4 and 5 on the environment is justified.

4. Units 4 and 5 will serve the interests of system economy and reliability.

5. There is reasonable assurance that Units 4 and 5 will conform to applicable State and local laws and regulations.

6. Public convenience and necessity require the construction of Units 4 and 5.


IT IS THEREFORE ORDERED THAT:

1. The Application for Amendment of the Certificate of Environmental Compatibility and Public Convenience and Necessity originally issued in Order No. 1999-671 be, and hereby is, approved to permit the construction and operation of Units 4 and 5 at the Broad River Energy Center.

2. Broad River Investors LLC shall notify the Commission's Executive Director of the commercial operation of Units 4 and 5 within ten (10) days of such operation.

3. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:


Chairman

ATTEST:


Executive Director

(SEAL)